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VIA EMAIL

Ted Yackulic
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Re: General Notice Letter and Demand to Negotiate Pre-Remedial Design ASAOC for the Quendall Terminals Superfund Site in Renton, WA

Ted:

We are writing in response to EPA's General Notice Letter and demand to negotiate an Administrative Settlement Agreement and Order on Consent ("ASAOC") for pre-Remedial Design studies at the Quendall Terminals Superfund Site ("Site"). Given what PSE knows about the Site at this time, including the fact that EPA's administrative record is not available for review, that we just received the most recent version of the Feasibility Study from Claire Hong last night, and that there are a number of outstanding 104(e) responses, PSE declines to submit an offer to negotiate an ASAOC for the proposed pre-Remedial Design study.

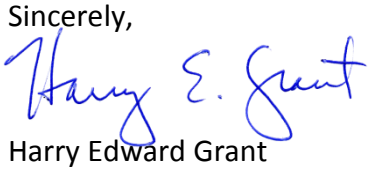
First, PSE is not liable as an arranger under CERCLA. An entity is liable as an arranger if it "enter[s] into a transaction for the sole purpose of discarding a used and no longer useful hazardous substance." *Burlington Northern Santa Fe Ry. Co. v. United States*, 556 U.S. 599 (2009). Here, the tar sold by Seattle Gas Company ("SGC") was an essential raw material for the business owned and operated by Reilly Tar & Chemical (and its predecessor, Republic Creosote Company) for over 50 years. Reilly ***purchased and transported*** tar from SGC's Lake Station in order to produce creosote oil, roofing tar, road oil and electrode pitch for aluminum products. Reilly purchased tar from many suppliers other than SGC, too. And, companies other than Reilly competed to purchase SGC's tar. Once the tar was sold to Reilly at Lake Station, SGC had no control over its use or disposal, and Reilly ultimately profited from the products it manufactured from the tar.

Second, despite the fact that Vertellus Specialties, Inc. ("Vertellus") admitted that it is the successor to Reilly in its September 2008 104(e) responses, EPA has waited nearly eight years to

ask Vertellus to participate in a meaningful way at the Site. Moreover, Vertellus is claiming that all of its historical insurance coverage was exhausted cleaning up similar sites in other states and it has no way of funding the necessary remediation. However, these "inability to pay" assertions stand in stark contrast to Vertellus' statements regarding its recent acquisition of Dow Chemical's sodium borohydride business for $200 million and its declaration that its annual sales are approaching $800 million. While Vertellus may have created a capital structure that is debt-heavy, EPA should not be lulled into letting the entity with the most responsibility for the current conditions at the Site escape liability through an "inability to pay" argument and expect other parties with little or no involvement at the Site to cover Vertellus' share.

Finally, PSE's reluctance to participate in the proposed negotiations should not be perceived by EPA as recalcitrance. In the last twenty-five years, PSE has taken the lead on cleaning up a number of sites involving former manufactured gas plants owned and/or operated by its predecessors. However, in this case, PSE has a corporate responsibility to ensure that its rate payers aren't forced to bear the burden of a cleanup projected to cost at least $80 million where the responsible parties, who both profited from the historical operations at the Site and stand to profit from the future development of the Site, are attempting to avoid paying for a problem they created.

Sincerely,



Harry Edward Grant
of
RIDDELL WILLIAMS P.S.

cc: Claire Hong (via email hong.claire@epa.gov)